6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

FILED
2004 OCT 14 A 10:

JOYCE DICKESON,	§	
PLAINTIFF,	§	
	§	SA04CA0921 FB
VS.	§	CIVIL ACTION NO. SA04CA0921
	§	
CRG HOLDINGS, LLC D/B/A CAVCO HOME CENTER,	§	
	§	
DEFENDANT.	§	

NOTICE OF REMOVAL

TO THE HONORABLE UNITED STATES DISTRICT JUDGE FOR THE WESTERN DISTRICT OF TEXAS:

1. CRG HOLDINGS, LLC D/B/A CAVCO HOME CENTER is Defendant in a civil action filed on September 1, 2004, in the 408th Judicial District Court of Bexar County, Texas, entitled *Joyce Dickeson v. C.R.G. Holdings, L.L.C. d/b/a Cavco Home Center*, bearing Cause Number 2004-CI-13383, a copy of the 407th Judicial District Court's file is attached hereto as Appendix "A" which is proceeded by an index listing all documents in said file.

2. The Original Petition was filed on September 1, 2004. A copy of the citation and petition in this action was received by the Defendant on September 21, 2004. This Notice of Removal is filed within thirty days of the receipt by Defendant of an Order, Petition, or Complaint from which it may first be ascertained that the case is one which is or has become removable. Furthermore, this Notice of Removal is being filed within one year after commencement of the action. Therefore, this Notice of Removal is timely filed pursuant to 28 U.S.C. §1446(b).

3. Defendant is informed and believes that Plaintiff JOYCE DICKESON was, and still is, a citizen of the state of Texas. Defendant CRG HOLDINGS, LLC D/B/A CAVCO HOME CENTER was, at the time of the filing of this action, and still is, a Delaware limited liability company, having its principal place of business in the State of Arizona.

4. This action is a civil action of which this Court has original jurisdiction under 28 U.S.C. §1332, and is one which may be removed to this Court by Defendant pursuant to the provisions of 28 U.S.C. §1441(b) in that it is a civil action between citizens of different states premised upon a good faith belief that the matter in controversy exceeds the sum of $75,000, exclusive of interest and costs because:

(1) Plaintiff seeks the recovery of medical care and expenses in the past and future; and

(2) Plaintiff seeks damages for physical pain and suffering, mental anguish and physical impairment.

WHEREFORE, PREMISES CONSIDERED, Defendant CRG HOLDINGS, LLC D/B/A CAVCO HOME CENTER removes this action pursuant to 28 U.S.C. §1446 from the 408th Judicial District Court of Bexar County, Texas.

Respectfully submitted,

SHADDOX, COMPERE, WALRAVEN & GOOD
1250 N.E. Loop 410, Suite 725
San Antonio, Texas 78209
210/822-2018
210/822-4068 (Fax Number)

By ______________________
STEPHANIE O'ROURKE
State Bar No. 15310800

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing NOTICE OF REMOVAL has been sent via certified mail, return receipt requested, on this the 14th day October 2004, to:

ATTORNEYS FOR PLAINTIFF
James A. Rickerson
Attorney at Law
126 E. Main Plaza
San Antonio, Texas 78205

STEPHANIE O'ROURKE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

JOYCE DICKESON,	§	
	§	
PLAINTIFF,	§	
	§	
VS.	§	CIVIL ACTION NO. ________________
	§	
CRG HOLDINGS, LLC D/B/A	§	
CAVCO HOME CENTER,	§	
	§	
DEFENDANT.	§	

APPENDIX "A"

1. Plaintiff's Original Petition
2. Affidavit of Inability - Pauper's Oath
3. Citation directed to Defendant, CRG Holdings, LLC d/b/a Cavco Home Center
4. Notice of Service of Process on Defendant CRG Holdings, LLC
5. Original Answer of Defendant, CRG Holdings, LLC d/b/a Cavco Home Center
6. Notice of Removal

Exhibit "1"

AFFIDAVIT OF INABILITY

2004CI13383

FILED DISTRICT CLERK BEXAR CO. TEXAS
2004 SEP -1 PM 4:33
DEPUTY

RECEIVED SEP 22 2004

JOYCE DICKESON **Plaintiff,**	§	**IN THE DISTRICT COURT**
	§	
V.	§	**408th JUDICIAL DISTRICT**
	§	
C.R.G. HOLDINGS, L.L.C. d/b/a CAVCO HOME CENTER **Defendants.**	§	**OF BEXAR COUNTY, TEXAS**

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES JOYCE DICKESON, hereinafter called Plaintiff, complaining of and about C.R.G. HOLDINGS, L.L.C., d/b/a CAVCO HOME CENTER, hereinafter called Defendants, and for cause of action would show unto the Court the following:

DISCOVERY CONTROL PLAN LEVEL

1. Plaintiff intends that discovery be conducted under Discovery Level 2.

PARTIES AND SERVICE

2. Plaintiff, JOYCE DICKESON, is an Individual whose address is 4510 CR 3841, San Antonio, Texas 78253.

3. Defendant C.R.G. HOLDINGS, L.L.C., d/b/a CAVCO HOME CENTER, a Limited Liability Company based in Texas, may be served with process by serving its registered agent of said company at its registered office. Service of said Defendant as described above can be effected by certified mail, return receipt requested.

JURISDICTION AND VENUE

4. The subject matter in controversy is within the jurisdictional limits of this court.

5. This court has jurisdiction over the parties because Defendants are Texas residents.

6. Venue in Bexar County is proper in this cause under Section 15.002(a)(1) of the Texas Civil Practice and Remedies Code because all or a substantial part of the events or omissions giving rise to this lawsuit occurred in this county.

FACTS

7. On or about September 1, 2002, Plaintiff, while a resident in a home manufactured by defendants for the purposes and in the manner in which manufactured homes are intended to be used, suddenly and without warning fell after the area in which the manufactured home was joined together buckled causing the conjoined area to rise. injuring Plaintiff.

LIABILITY OF DEFENDANT

8. Defendant C.R.G. HOLDINGS, L.L.C., d/b/a CAVCO HOME CENTER was, at all times mentioned herein a limited liability company doing business under the laws of the State of Texas, and was engaged in the manufacture and sale of the home, the subject of this suit, which was is sold in state of Texas for the purpose of residential living..

9. Plaintiff would show the court that the occurrence made the basis of this suit and the resulting injuries and damages set out below were a direct and proximate result of Defendant's negligence in one or more of the following respects, or by combination thereof:

a. in failing to inspect the home for defects, including but not limited to uneveness along the marriage line, and/or workmanship which caused Plaintiff's injuries;

b. in failing to properly warn Plaintiff about the dangerous condition of the premises;

10. Defendant was negligent, in the following respects:

a. Failing to use due care in the manufacture;

b. Failing to use due care in the design of the home;

c. Failing to use due care to test and/or inspect the premises prior to the sale of the home as residential in order to determine its durability and function ability for the purpose for which it was intended.

11. In addition, Defendant expressly and impliedly warranted to the public generally, that the home, the subject of this suit, was of merchantable quality and was safe and fit for the purpose intended when used under ordinary conditions and in an ordinary manner. Plaintiff relied upon these implied warranties and suffered the injuries and damages set forth below as a proximate result of the breach of these warranties.

12. Plaintiff would show the court that Defendant was negligent in designing the home, the subject of this suit.

13. Plaintiff cannot more specifically allege the act of negligent design on the part of Defendant aside from Defendant's failure to design the home in question in a manner which would have prevented it from buckling and rising, for the reason that facts in that regard are peculiarly within the knowledge of Defendant.. In the alternative, in the event Plaintiff is unable to prove specific acts of negligent design, Plaintiff relies on the doctrine of Res Ipsa Loquitur.

14. In this connection, Plaintiff will show the court that the design of the Defendant was within the exclusive control of Defendant. Plaintiff had no means of ascertaining the method or manner in which the product was designed, and it was used by Plaintiff in the manner in which it was intended.

15. The occurrence causing harm to Plaintiff, as described above, was one which, in the ordinary course of events, would not have occurred without negligence on the part of Defendant. Thus, Defendant was negligent in the design of the home which negligence was a proximate cause of the injuries and damages sustained by Plaintiff.

16. At all times material hereto, all of the agents, servants, and/or employees for Defendant who were connected with the occurrence made the subject of this suit, were acting within the course and scope of their employment or official duties and in furtherance of the duties of their office or employment. Therefore, Defendant is further liable for the negligent acts and omissions of their employees under the doctrine of Respondeat Superior.

PROXIMATE CAUSE

17. Each and every, all and singular of the foregoing acts and omissions, on the part of Defendants, taken separately and/or collectively, constitute a direct and proximate cause of the injuries and damages set forth below.

DAMAGES FOR PLAINTIFF, JOYCE DICKESON

18. As a direct and proximate result of the occurrence made the basis of this lawsuit, and Defendants' acts as described herein, Plaintiff was caused to suffer personal injuries, including but not limited to a fractured humerus, shoulder and back pain, and to endure anxiety resulting in damages more fully set forth below.

19. As a direct and proximate result of the occurrence made the basis of this lawsuit, Plaintiff, has incurred the following damages:

A. Reasonable medical care and expenses in the past. These expenses were incurred by Plaintiff for the necessary care and treatment of the injuries resulting from the accident complained of herein and such charges are reasonable and were usual and customary charges for such services in Bexar County, Texas;

B. Reasonable and necessary medical care and expenses which will, in all reasonable probability, be incurred in the future;

C. Physical pain and suffering in the past;

D. Mental anguish in the past;

E. Physical pain and suffering in the future; and

F. Physical impairment in the past.

20. By reason of the above, Plaintiff has suffered losses and damages in a sum within the jurisdictional limits of the Court and for which this lawsuit is brought.

PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that the Defendants be cited to appear and answer herein, and that upon a final hearing of the cause, judgment be entered for the Plaintiff against Defendants, jointly and severally, for damages in an amount within the jurisdictional limits of the Court; together with pre-judgment interest (from the date of injury through the date of judgment) at the maximum rate allowed by law; post-judgment interest at the legal rate, costs of court; and such other and further relief to which the Plaintiff may be entitled at law or in equity.

Respectfully submitted,

By: [signature]
JAMES A. RICKERSON
Texas Bar No. 24003679
126 E. Main Plaza
SAN ANTONIO, Texas 78205
Tel. (210)223-1123
Fax. (210)223-7455
Attorney for Plaintiff
JOYCE DICKESON

PLAINTIFF HEREBY DEMANDS TRIAL BY JURY

Exhibit "2"

2004CI13383 **TAUPER'S OATH** AFFIDAVIT OF INABILITY

THE STATE OF TEXAS,) **408th**

)

COUNTY OF BEXAR) PROCESS CR

BEFORE ME, the undersigned authority, on this day personally appeared **JOYCE DICKESON, Plaintiff**, who, being by me duly sworn, on oath stated as follows:

"My name is **JOYCE DICKESON.** I am the **Plaintiff** in the above-referenced cause.

"My monthly income consists of **$890.00** per month.

"I am not employed.

"I receive no child support.

"I receive social security payments of $890 per month.

"I receive no public assistance payments.

"I have no other income.

"I own no real estate.

"I own no stocks or bonds.

"I own no other property.

"I currently have $20 in cash.

"I have $0 in checking or savings accounts.

"I have no dependent(s).

"I have debts in the total sum of $3000.

"I have approximately **$750.00** in monthly expenses.

"I am represented by legal counsel at no cost to me.

"After consultation with my attorney, I believe that I have a meritorious claim.

"I am unable to pay the court costs.

"I verify that the statements made in this affidavit are true and correct."

JOYCE DICKESON

SUBSCRIBED AND SWORN TO BEFORE ME, on ____________.

ELIZABETH GONZALEZ VILLARREAL
MY COMMISSION EXPIRES
October 19, 2005

NOTARY PUBLIC, State of Texas

Exhibit "3"

CERTIFIED MAIL #71603901984214186198

"The State of Texas" NO. 2004-CI-13383

JOYCE DICKESON
Plaintiff
vs.

CRG HOLDINGS INC ET AL
Defendant
(Note: Attached Document May Contain Additional Litigants.)

IN THE DISTRICT COURT
408th JUDICIAL DISTRICT
BEXAR COUNTY, TEXAS

NOTICE

Citation Directed to: CRG HOLDINGS LLC DBA CAVCO HOME CENTER

AFFIDAVIT OF INABILITY

BY SERVING ITS REGISTERED AGENT, CORPORATION SERVICE COMPANY
701 BRAZOS ST 1050
AUSTIN TX 78701-3258

"You have been sued. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 a.m. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you." Said petition was filed on the 1st day of September, 2004.
ISSUED UNDER MY HAND AND SEAL OF SAID COURT ON THIS 17th DAY OF September A.D., 2004.

PLAINTIFF'S ORIGINAL PETITION

JAMES A RICKERSON
Attorney/PLAINTIFF
address
126 E MAIN PLZ
SAN ANTONIO, TX 78205-2745

MARGARET G. MONTEMAYOR
District Clerk of Bexar County, Texas
Bexar County Courthouse
San Antonio, Texas 78205

By Yvette Gonzales Deputy
YVETTE GONZALES

OFFICER'S RETURN

Came to hand on the 17th day of September, A.D., 2004 at 1:50 o'clock P.M. and EXECUTED (NOT EXECUTED) by CERTIFIED MAIL, on the ____ day of ____________, A.D., ______, by delivering to ______________________________ a true copy of this citation ______________________, upon which I endorsed the date of delivery, together with the accompanying copy of the PLAINTIFF'S ORIGINAL PETITION

Cause of failure to execute this ____________________ is ____________________.

MARGARET G. MONTEMAYOR
Clerk of the District Courts of
Bexar County, Texas

By ______________________ Deputy
YVETTE GONZALES

ORIGINAL
(DK003)

Exhibit "4"

RECEIVED
SEP 2 2 2004

CSC.
CORPORATION SERVICE COMPANY®

NTP / ALL
Transmittal Number: 3667773
Date Processed: 09/21/2004

Notice of Service of Process

Primary Contact: Mr. Raymond Smerge
Centex Corporation
2728 N. Harwood
Mailroom No. 209
Dallas, TX 75201-1516

Ans. Due Oct. 18

Entity:	CRG Holdings, LLC Entity ID Number 1739275
Entity Served:	CRG Holdings LLC dba Cavco Home Center
Title of Action:	Joyce Dickeson vs. CRG Holdings LLC dba Cavco Home Center
Document(s) Type:	Citation/Petition
Nature of Action:	Personal Injury
Court:	Bexar District Court , Texas
Case Number:	2004-CI-13383
Jurisdiction Served:	Texas
Date Served on CSC:	09/21/2004
Answer or Appearance Due:	10:00 am Monday next following the expiration of 20 days after service
Originally Served On:	CSC
How Served:	Certified Mail
Plaintiff's Attorney :	James A Rickerson 210-223-1123

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC.
2711 Centerville Road Wilmington, DE 19808 (888) 690-2882 | sop@cscinfo.com

Exhibit "5"

COPY

FILED DISTRICT CLERK 04 SEP 29 PM 3:34 DEPUTY BY

CAUSE NUMBER 2004-CI-13383

JOYCE DICKESON,	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
VS.	§	408TH JUDICIAL DISTRICT
	§	
C.R.G. HOLDINGS, L.L.C. D/B/A CAVCO HOME CENTER,	§	
	§	
	§	
DEFENDANT.	§	BEXAR COUNTY, TEXAS

ORIGINAL ANSWER OF DEFENDANT,
C.R.G. HOLDINGS, L.L.C. D/B/A CAVCO HOME CENTER

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes CRG HOLDINGS L.L.C. D/B/A CAVCO HOME CENTER, Defendant herein, and files this, its Original Answer to Plaintiff's Original Petition, and would show the Court as follows:

I.

Defendant, CRG HOLDINGS L.L.C. D/B/A CAVCO HOME CENTER, generally denies the allegations contained within Plaintiff's Original Petition and demands strict proof thereof by a preponderance of the evidence, as provided by Rule 92, Texas Rules of Civil Procedure.

WHEREFORE, PREMISES CONSIDERED, CRG HOLDINGS L.L.C. D/B/A CAVCO HOME CENTER prays that upon final trial the Court will enter a take-nothing judgment against the Plaintiff and in favor of this Defendant, and for such other and further relief to which it may be justly entitled.

Respectfully submitted,

SHADDOX, COMPERE, WALRAVEN & GOOD
1250 N.E. Loop 410, Suite 725
San Antonio, Texas 78209
210/822-2018
210/822-4068 (Fax Number)

By ______________________
STEPHANIE O'ROURKE
State Bar No. 15310800

ATTORNEYS FOR DEFENDANT, CRG HOLDINGS L.L.C. D/B/A CAVCO HOME CENTER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing ORIGINAL ANSWER OF DEFENDANT CRG HOLDINGS L.L.C. D/B/A CAVCO HOME CENTER has been sent via certified mail, return receipt requested, on this the 29th day September 2004, to:

ATTORNEYS FOR PLAINTIFF
James A. Rickerson
Attorney at Law
126 E. Main Plaza
San Antonio, Texas 78205

____
STEPHANIE O'ROURKE

Exhibit "6"

CAUSE NUMBER 2004-CI-13383

JOYCE DICKESON,	§	IN THE DISTRICT COURT
	§	
PLAINTIFF,	§	
	§	
VS.	§	408TH JUDICIAL DISTRICT
	§	
C.R.G. HOLDINGS, L.L.C. D/B/A CAVCO HOME CENTER,	§	
	§	
	§	
DEFENDANT.	§	BEXAR COUNTY, TEXAS

NOTICE OF REMOVAL

TO THE HONORABLE JUDGE OF SAID COURT:

Please take notice that the civil action captioned above, filed on September 1, 2004, in the 408th Judicial District Court of Bexar County, Texas, entitled *Joyce Dickeson v. C.R.G. Holdings, L.L.C. d/b/a Cavco Home Center,* Cause Number 2004-CI-13383, has been removed from that Court to the United States District Court for the Western District of Texas, San Antonio Division, effective October 14, 2004. On such date, a Notice of Removal, a copy of which is attached, was filed with the Clerk in the United States District Court, and a copy of that Notice has been filed with the Clerk of the State Court, effecting removal pursuant to 28 U.S.C. §1446.

Respectfully submitted,

SHADDOX, COMPERE, WALRAVEN & GOOD
1250 N.E. Loop 410, Suite 725
San Antonio, Texas 78209
210/822-2018
210/822-4068 (Fax Number)

By ______________________
STEPHANIE O'ROURKE
State Bar No. 15310800

ATTORNEYS FOR DEFENDANT, CRG HOLDINGS LLC D/B/A CAVCO HOME CENTER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing NOTICE OF REMOVAL has been sent via certified mail, return receipt requested, on this the 14th day October 2004, to:

ATTORNEYS FOR PLAINTIFF
James A. Rickerson
Attorney at Law
126 E. Main Plaza
San Antonio, Texas 78205

____
STEPHANIE O'ROURKE